

Opinion No. 53-5709

March 23, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Hon. Robert D. Castner State Auditor Santa Fe, New Mexico

{*102} In your letter dated March 11, 1953, you enclose a request from an attorney representing a taxpayer relative to the salary of the Chief Tax Commissioner. You state that under Section 76-520, 1941 Comp., p.s., this salary is fixed at \$ 6,000 annually. However, the Appropriation Act, being Ch. 179, Laws of 1949, increased the salary to \$ 7,800 and by authority of the Act the Board of Finance adjusted the salary to \$ 8400. . Under the General Appropriation Act. Ch. 227, Laws of 1951, the salary of this officer was provided for in the sum of \$ 8400 annually. However, under Section 21 of the Act, the Board of Finance adjusted the salary to \$ 9900 pursuant to the authority given in the Appropriations Act.

An appropriation act is a law passed by the Legislature and during the biennium when it is in effect it supercedes previous statutes fixing salaries in conflict with the appropriation act. It is therefore apparent that the adjusted salaries of the Chief Tax Commissioner are not questionable and were legally paid by you.

In addition to duties as Chief Tax Commissioner, the same officer was appointed Secretary of the Capitol Buildings Improvement Commission and has been drawing an additional salary of \$ 175 per month. You inquire whether this additional salary was legally payable to the officer already holding another office. Section 76-520, 1941 Comp., p.s., provides that the Chief Tax Commissioner shall devote all of his time to the performance of the duties of his office. The language "all of his time" is somewhat ambiguous since it is not to be presumed that the Legislature intended this officer to spend 24 hours of the day in the performance of his duties. This language is therefore subject to construction and perhaps is synonymous with language in other statutes which provide for an officer devoting "full time" to the performance of his duties. Full time is the amount of time considered the normal or standard amount for working during a given period and has been construed to mean all of the time required normally to perform the duties of the office. There is no requirement that the work be done during office hours but the same can be done outside of office hours, if desired. The hours for which state offices are required to remain open, under the provisions of Section 10-402, 1941 Comp., p.s., may be set by the Governor but such statute and the hours fixed thereunder apply to state employees and are not specifically applicable to state officers. It is thus apparent that if the Chief Tax Commissioner has been able to devote the amount of time necessary and required to perform the duties of the office of Chief Tax Commissioner, he has substantially complied with the requirement of the statute and, if during that time is not required {*103} in the performance of such duties or during outside office hours he can perform the duties of Secretary of the additional

Commission, there is no prohibition against his holding both offices or positions and being paid additional salary as such Secretary.

This office, in Opinions Nos. 3906, 4031, 4293, 4651 and 4993, has held that an officer may legally perform additional duties in connection with a separate position, which are not incidental to his primary office, and be paid additional compensation therefor. These opinions refer to the additional salaries of Supreme Court Justices acting as trustees of the State Law Library, to additional salary of the State Treasurer acting as treasurer and custodian of the Employment Security Commission funds, and additional salary of the Superintendent of Public Instruction acting as Secretary of the Vocational Educational Board in connection with Federal funds.

From the foregoing, it is apparent that the payments made to the Chief Tax Commissioner, both as salary for that office and as salary for the position of Secretary of the Buildings Commission, are valid and when the proper officer certified the payroll and that services were rendered, you were authorized to make payments therein provided for.

By: C. C. McCulloh

Assist. Attorney General